REMARKS

I. Introduction

This amendment is filed pursuant to a Request for Continued Examination pursuant to 37 C.F.R. § 1.114 and paying the required fee set forth in § 1.17(e). Claims 27, 31 and 48 have been amended. New claims 60 and 61 have been added. The amendment is supported by the original disclosure and does not add new matter.

Therefore, pursuant to 37 C.F.R. § 1.114(d), Applicant requests that the finality of the February 25, 2008 Office Action be withdrawn, that the appeal be withdrawn, and that the Office consider Applicant's current Amendment and Remarks.

II. Restriction Requirement

Claims 57-59 depend from linking claim 48. Since, as explained below, claim 48 is allowable, rejoinder of claims 57-59 is respectfully requested.

In addition, Applicant respectfully disagrees with the Office Action's reasoning for the restriction. The Office Action states that "new claim 57 incorporated a skill based game, where the originally claimed lottery is a purely chance based game, and new 58-59 are drawn to event based wagering, and specifically sports related wagering, where the originally claimed invention is drawn to a lottery system and specifically an instant and interactive lottery game system." *Office Action* at 2. The Office Action's characterization of the claims is not correct. The interactive game recited in claim 48 is not limited to a lottery game.

III. Rejection of Claims 27 and 48 Under 35 U.S.C. § 103(a)

Claims 27 and 48 stand rejected under 35 U.S.C. § 103(a) over U.S. Patent No. 5,569,082 ("Kaye") in view of U.S. Patent 5,772,510 ("Roberts"). Claims 27 and 48 are not rendered obvious by the proposed combination of Kaye and Roberts.

Some example embodiments of Applicant's claimed invention generally relate to methods and systems related where an instant lottery ticket can optionally be activated for use in a supplemental interactive game that is played using a computing device. The instant lottery ticket can also be purchased without activating this feature. In contrast, Kaye does not teach or suggest such a hybrid ticket, or any game or game ticket dispenser with this feature.

To establish a prima facie case of obviousness, the prior art reference(s) must teach or suggest ALL the claim limitations. See MPEP 2143. Claim 27, as amended, recites in part:

> 27. A lottery gaming system, comprising:
> **a lottery ticket, the lottery ticket including a ticket identifier, an interactive game information**, an instant game information, and a removable covering concealing the instant game information;

> a lottery ticket dispenser configured to dispense the lottery ticket,
>
> the lottery ticket dispenser including an input device configured to receive, prior to the lottery ticket being dispensed, an input indicating a player's choice between purchasing the lottery ticket as a hybrid instant lottery ticket that is also usable in an interactive game and purchasing the lottery ticket without activating the lottery ticket for use in the interactive game,
>
> **the lottery ticket dispenser configured, responsive to receiving the input indicating the player's choice to purchase the lottery ticket without activating the lottery ticket for use in the interactive game,** to dispense the lottery ticket without activating the lottery ticket for use in the interactive game;
>
> a central computer system in communication with the lottery ticket dispenser and configured to receive from the lottery ticket dispenser an indication that the player has chosen to purchase the lottery ticket for use in the interactive game, the central computer system configured to, responsive to the receipt of the indication, to activate the lottery ticket for use in the interactive game; and
>
> **a computing device remote from and in communication with the central computer system**, the computing device configured to receive the interactive game information from the lottery ticket, the computing device further configured**, responsive to receipt of an indication that the lottery ticket was activated for use in the interactive game, to be utilized by the player to play the interactive game based at least in part on the interactive game information.**

Applicant incorporates by reference all the arguments made in the previous Office Action response. The Office Action admits that Kaye fails to disclose games without the interactive game feature, or an instant lottery ticket that dispensing instant tickets can optionally be activated for use in an interactive game, *Office Action* at 3 ("Kaye fails to disclose games without the features of his invention (destiny bonus)...").

The previous Office Action cited Roberts as allegedly providing a "hybrid ticket". But Roberts does not supply the missing feature of Kay. In an attempt to correct the defects of Kaye as a reference, the Office Action proposes the addition of Roberts. The Office Action characterizes Roberts as having "an input indicating a player's choice between purchasing the lottery ticket as a hybrid instant lottery ticket that is also usable in an interactive game and purchasing the lottery ticket without activating the lottery ticket for use in the interactive game". Applicant disagrees with this characterization of the Roberts reference. The interactive game recited in Applicant's claim 27 is an interactive game which is played using "a computing device" by the player. The Office Action characterizes Robert's scratch-off ticket as the recited "interactive game". Roberts does not teach or suggest an interactive game played using a computing device, a ticket which is used in the play of such a game, let alone such a game which is played "based at least in part on the

interactive game information" provided on such a ticket. Moreover, what the Office Action characterizes as Roberts "interactive game" is in fact not an "interactive game" but merely a scratch-off lottery game. If Robert's game arguably corresponded to anything at all in Applicant's claim 27, it would be the "instant game" with information concealed by the removable coating, not the recited interactive game. Therefore, for at least this reason, the addition of Roberts does not supply the missing choice between whether to use a scratch off lottery ticket for just instant lottery play or also for an interactive game played using a computing device.

Moreoever, in addition to the arguments made against this proposed combination of Kaye and Roberts in the previous response, Applicant has added a recitation to claim 27 that expressly recites the computing device is configured to provide access to the interactive game responsive to an indication of whether the lottery ticket was activated to provide access to the interactive game. This feature is not in Kaye, and is not provided by Roberts, which has nothing to do with computer-based interactive games whatsoever. This further distinguishes Robert's instant scratch-off game (which the Office Action characterizes as the interactive game), because it involves a computer in the play of the interactive game, not scratching off a ticket.

Accordingly, neither of the cited references nor their combination teach or suggest all the features of Applicant's claim 27, which should therefore be allowable. Independent claim 48 has been amended in a manner similar to claim 27, and should therefore be allowable for at least similar reasons.

Dependent claims 28-38 and 43-47, and 49-54 should also be patentable over Kaye & Roberts for similar reasons.

Separately and independently, with respect to claim 28, neither Kaye nor Roberts teach or suggest printing interactive game information on an instant win lottery ticket responsive to an indication the player has chosen to purchase the instant win lottery ticket for use in an interactive game. Kaye 3:4-12, cited in the Office Action as allegedly teaching this feature, cannot teach or suggest this feature, particularly since Kaye ***does not teach or suggest using instant win lottery tickets*** that a player may selectively choose to activate for use in an interactive game.

Separately and independently, with respect to claim 29, neither Kaye nor Roberts teach or suggest a reader ***in the ticket dispenser*** configured to read the ticket identifier from the lottery ticket prior to the ticket being activated for use in the interactive game. The Office Action cites Kaye 4:53-61, where tickets are read by an amusement game terminal, but this

reading occurs only after tickets have been dispensed and activated for use in the interactive game, not before, and not by the ticket dispenser. Therefore claim 29 should be allowable for at least this additional reason.

Separately and independently, with respect to claim 30, neither Kaye nor Roberts teach or suggest a reader ***in the ticket dispenser*** that is configured to read the ticket. The Office Action cites Kaye 3:4-18, but this section of Kaye is silent as to that feature. To the extent the Office Action is taking Official Notice that this feature is allegedly "well known", the Applicant traverses and requests an affidavit of personal knowledge from the Examiner.

Separately and independently, claim 31 recites that the ticket dispenser is configured to communicate the ticket identifier read from the lottery ticket to the central computer system. The Office Action cites Kaye 4:46-52 as allegedly teaching this feature. The cited section is silent as to this feature. If anything, this section might arguably imply sending Kaye's destiny codes **from the central server to the dispenser**, not vice versa. Since the recited feature is not present in the cited references, claim 31 should be allowable for at least this additional reason.

It is therefore respectfully submitted that claim 27, and its dependent claims 28-38, and claim 48, and its dependent claims 49 to 54, are patentable over Kaye in view of Roberts. Withdrawal of the rejection is respectfully requested.

III. Rejection of Claims 39 Under 35 U.S.C. § 103(a)

Claim 39 was rejected under 35 U.S.C. § 103(a) over Kaye in view of U.S. Patent 5.356,144 ("Fitzpatrick"). It is respectfully submitted that proposed combination of Kaye and Fitzpatrick does not render obvious claim 39 for at least the following reasons.

Claims 39 depends from claim 27 and therefore should be allowable for at least the same reasons as those given above for claim 27. Moreover, the Office Action admits that Kaye does not teach or suggest all the features of Applicant's claim 27. Fitzpatrick is not put forward as correcting and does not correct the defects of Kaye as a reference with respect to claim 27. Accordingly, Kaye combined with Fitzpatrick does not teach all the features of claim 27, or its child claim 39. Claim 39 should therefore be allowable over the proposed combination of references.

Applicant's claim 39 has a feature of "a computing device remote from and in communication with the central computer system, the computing device configured to receive the interactive game information from the lottery ticket, the computing device further

configured to be utilized by the player to play the interactive game based at least in part on the interactive game information" where the computing device is "a handheld device". The Office Action, to the extent it is understood, does not explain, and the proposed combination is not believed to teach, how combining the "non-portable lottery generating device of Kaye" with the portable lottery device of Fitzpatrick, yields the claimed feature of Applicant's claim 39.

Accordingly, since the proposed combination of Kaye and Fitzpatrick does not disclose or suggest all of the features of either claim 27, or of its dependent claim 39, claim 39 is patentable over the proposed combination of Kaye and Fitzpatrick.

IV. Rejection of Claims 55 and 56 Under 35 U.S.C. § 103(a)

Claims 55 and 56 were rejected under 35 U.S.C. § 103(a) over Kaye in view of U.S. Patent 5,158,293 ("Mullins"). It is respectfully submitted that the proposed combination of Kaye and Mullins does not render claims 55 or 56 obvious for at least the following reasons.

Claims 55 and 56 depend from claim 48, and therefore should be allowable for at least the same reasons as those given above for claim 48. Also, as admitted in the Office Action, Kaye does not teach or suggest all the features of claim 48. Mullins is not put forward as teaching, and does not teach, the features of claim 48 missing from the Kaye reference that were discussed previously.

Separately and independently from the arguments made above for its parent claim, claim 55 recites "providing the interactive game information ***on the removable covering***", e.g., on a peel off or pull off layer concealing the instant game information. As discussed previously, the interactive game information is information used to play an interactive game using a computing device. Mullins neither teaches nor suggests providing information used to play an interactive game using a computing device, and certainly does not suggest providing such information on a removable covering for an instant game.

Moreover, claim 56 recites "the receiving at least a portion of the interactive game information from the ticket at the computing device occurs **after** the tender of the lottery ticket, the interactive game information being provided by the player from removable covering." The only covering described in Mullins is a scratch-off or rub-off. Thus, the player in Mullins will not be left with any cover having game play information once they play the instant win game ticket. Accordingly, once Mullins' ticket is tendered for redemption, Mullins' player is without the information printed on Mullin's scratch-off area. Thus, even if

Mullins arguably had the required information on the scratch-off region, which it does not, it would be inoperative for use in a game operating according to Applicant's claim 56. Thus, claim 56 should be allowable for this additional reason.

Since neither Mullins, nor Kaye, nor their combination, teach or suggest all the features of Applicant's claim 55 and 56. These claims are therefore not obvious over the proposed combination.

V. New Claims 60 and 61

New claims 60 and 61 depend respectively from claims 27 and 48. They therefore should be allowable for at least the same reasons as their respective parent claims. Moreover, they recite preventing access to the interactive game if the lottery ticket has not been activated. This feature is not taught or suggested in Kaye, Roberts, or their combination.

CONCLUSION

In light of the foregoing, it is respectfully submitted that all of the presently pending claims are in condition for allowance. Prompt reconsideration and allowance of the present application are therefore earnestly solicited. While no additional fee is considered to be due, the Office is hereby authorized to charge any fees, which may arise out of the filing of this paper, or credit any overpayments under 37 C.F.R. §1.16 or §1.17 to the deposit account of **K&L Gates LLP,** Deposit Account No. **080570**.

The Examiner is invited to contact the undersigned at the telephone number below to discuss any matter concerning this application.

Respectfully submitted,

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By: //Andrew L. Reibman//

Andrew L. Reibman
Reg. No. 47,893
K&L Gates LLP
599 Lexington Avenue
New York, N.Y. 10022

(212) 536-3900 (telephone)
(212) 536-3901 (facsimile)
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